tion that a party has a right to sue when he *believes* that he has a good cause of action. It is enough if the plaintiff can establish that at the defendant's request he forbore to prosecute a claim which he *believed* was well founded. And it is no answer to show that the claim was not well founded, or was not even reasonably doubtful.

Probably the second view is nearer the law in America.[1] It would be safest in this country for the plaintiff to allege that he forbore the prosecution of a claim which was reasonably doubtful. The second view is also the most convenient from the standpoint of public policy.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

COMMON CARRIERS — CONTRIBUTORY NEGLIGENCE. — A man desiring to ship stock, knew that the only platform provided by the railroad company for that purpose was defective. *Held*, that he was not guilty of contributory negligence in using it, provided there was no carelessness on his own part. A public duty rests upon the company to provide suitable platforms, and it cannot evade its liability because of the knowledge of the plaintiff. *White* v. *Cincinnati Railway Co.*, 12 S. W. Rep. 936 (Ky.).

COMMON CARRIERS — LIMITING LIABILITY. — The plaintiff shipped horses under an agreement limiting the liability of the carrier to cases of negligence, and restricting the damages to one hundred dollars for each horse. By so doing he obtained reduced rates. *Held*, the contract was valid, and the plaintiff should not have been allowed to show that the horses were in fact worth more. *Richmond & Danville R. Co.* v. *Payne*, 10 S. E. Rep. 749 (Va.).

COMMON CARRIERS — LIMITING LIABILITY — FREE PASSES. — An agreement, by one accepting as a gratuity a free pass upon a railroad, to assume all risk of accident which may happen to him while on the train, by which his person may be injured, is valid. The accident was due to the negligence of the servants of the company. The pass was a mere gratuity, and therefore the case does not conflict with *Railroad Co.* v. *Lockwood*, 17 Wall. 367, in which it was held that a similar limitation on a pass given to a drover, who was to accompany his cattle, was invalid; for there the court say the pass was not gratuitous, for it was given as one of the terms upon which the cattle were carried. *Quimby* v. *B. & M. Railroad Co.*, 23 N. E. Rep. 205 (Mass.).

There are only two cases on this subject exactly in point, — *Griswold* v. *Railway Co.*, 53 Conn. 371, in which it was held that the limitation was valid, and *Railway Co.* v. *McGown*, 65 Tex. 643, *contra*.

CONSTITUTIONAL LAW — EQUAL PROTECTION OF THE LAWS. — The defendant was indicted for non-payment of license fee, under a law exacting a fee of one dollar from a physician who had resided for four years in the town where he took out his license, and five dollars from one who had resided a less time. *Held*, that the law was unconstitutional as imposing unequal burdens on citizens. "Class legislation, discriminating against some and favoring others, is prohibited; but legislation which in carrying out a public purpose is limited in its application, if, within the sphere of its operation, it affects alike all persons similarly situated, is not within the amendment." The present case was not within the exception, because the distinction as regards length of residence had no connection with the public purpose of a license law, namely, the protection of the public against charlatans. *State* v. *Pennoyer*, 18 Atl. Rep. 878 (N. H.).

[1] *Cline & Co.* v. *Templeton*, 78 Ky. 550.

CONSTITUTIONAL LAW — LIBERTY — POLICE POWER. — *Held*, an act providing that the wages of miners and certain others shall be paid in lawful money of the United States, and an act declaring unlawful every contract by which the right to receive wages in lawful money is waived, are constitutional. *Hancock* v. *Yaden*, 23 N. E. Rep. 253 (Ind.).

The law in Pennsylvania and West Virginia is directly the reverse. *State* v. *Goodwill*, 10 S. E. Rep. 285 (W. Va.), digested in 3 Harv. L. Rev. 334.

CONSTITUTIONAL LAW — POLICE POWER — DEPRIVATION OF PROPERTY — FIXING WATER-RATES. — Const. Cal., art. 14, § 1, provides that the rates for the use of water in any city shall be fixed annually by the board of supervisors of such city. Defendants passed an ordinance fixing rates so low as to make it impossible for the plaintiff to furnish water without a loss. *Held*, that the State possessed, and could delegate to the defendants, only the power to regulate the rates. This power to *regulate* property did not include the power to *destroy*. By putting the rates so low as to prevent any gain, the defendants had practically destroyed the value of the plaintiff's works. Therefore, this ordinance went beyond the power given by the State Constitution. *Spring Valley Water-Works* v. *San Francisco*, 22 Pac. Rep. 910 (Cal.).

Since *Munn* v. *Illinois* settled the right of a State Legislature to regulate a business of a *quasi* public nature, the extent of this power has frequently been questioned. It is undoubtedly for the Legislature to say whether the regulation is reasonable or not. This legislative discretion is subject, however, to the limitation that the owner of the property cannot be entirely deprived of profit. It has been claimed that a fair rate of gain, say three per cent. at least, must be left him; but Brewer, J., seems to have stated the law when he said: "The right of judicial interference exists only when the schedule of rates established will fail to secure to the owners of the property some income from their investment. As to the amount of such compensation, if some compensation is in fact secured, the Legislature is the sole judge." *Railway Co.* v. *Dey*, 35 Fed. Rep. 866, 877; *Banking Co.* v. *Smith*, 128 U. S. 174, 179. Contrary to this view is a recent decision in N. Y., where, for part of the business of a grain elevator, the "actual cost" was fixed as a maximum charge, and the regulation was sustained. *People* v. *Budd*, 22 N. E. Rep. 670, digested 3 Harv. L. Rev. 282.

CONTRACTS — ILLEGALITY — TRUSTS. — B. contracted with the plaintiff corporation for carbons for electric lights. The plaintiff assigned this contract and all the rest of his business to the defendant, in pursuance of an agreement to form a "trust." The carbons were manufactured at the plaintiff's factory and delivered to B., but were billed in the name of the "trust." The money was paid into court, and the question is whether the plaintiff corporation or the "trust" ought to have it. *Held*, the agreement for a "trust" was illegal, and the plaintiff could have refused to assign; but as it did assign, it became a party to the illegal transaction; and as the goods were supplied in the name and under the responsibility of the "trust," the receiver of the "trust" is entitled to the money. *Pittsburg Carbon Co.* v. *McMillin*, 23 N. E. Rep. 530 (N. Y.).

CORPORATIONS — NOTICE TO STOCKHOLDERS. — A shareholder gave notice of his intention to withdraw, and demanded certain payments to which he was entitled under the original by-laws. These by-laws had been changed, subsequently to the shareholder's admission to the corporation, without his knowledge. *Held*, that a shareholder is not bound to take notice of modifications of by-laws from the records of the corporation, but is entitled to treat the by-laws in force when he became a member as still existing, unless actual notice has been given him. *McKenney* v. *State Loan Ass'n*, 18 Atl. Rep. 905 (Del.).

CORPORATIONS — RIGHTS WHEN STOCKHOLDERS IN RIVAL CORPORATIONS. — A railroad corporation may, as a means of collecting a debt, acquire stock in another company, and it may thus gain control of a majority of the votes. If, however, the roads are rival lines and the interests of the two are opposed, the minority of the stockholders in the last-named company may get an injunction restraining the corporation owning a majority of the stock, and all persons acting in its behalf, from voting on this stock in the election of officers, or from exercising any control over the affairs of the company. *Memphis & C. R. Co.* v. *Wood*, 7 So. Rep. 108 (Ala.).

DOWER — EQUITY OF REDEMPTION. — A widow who has joined with her husband in a mortgage of his land, demands that the executor sell the land under a power of

sale given in the will, pay off the mortgage, and assign dower out of the surplus to the extent of one-third the value of the unincumbered land. *Held*, that dower is restricted to one-third the value of the equity of redemption, and that the widow must contribute to pay off the debt, and cannot throw the whole upon the heir. The power of sale in the will shows no intention of the testator to vary this rule. *Burnett* v. *Burnett*, 18 Atl. Rep. 378 (N. J.).

The case contains an able discussion of a point on which there is a remarkable dearth of authority. Dower attaches only to legal estates, never to equitable. In joining in the mortgage, the widow released absolutely all rights at law. Logically, equity can give her no rights to the equity of redemption. Yet not till recently was this point definitely settled in England. *Dawson* v. *Whitehaven Bank*, 6 Ch. Div. 218. See 2 Sch. & Lef. 387, *accord.*; 2 Eq. Cas. Ab. 387, pl. 11; Amb. 687; 1 Bligh, 104, at 123, *contra*. By statute (3 & 4 Will. IV. c. 105) to-day dower in equities of redemption is allowed.

In this country, a mortgage has long been treated, both at law and equity, as a pledge; for many, if not all, purposes the mortgagor's interest is a *legal* estate. Dower attaches to this as to other legal estates. As against the mortgagee, the right is lost; but if the debt be paid off, it revives in the whole land. 1 Scribner on Dower (2d ed.), p. 486. It remains to work out the rights of contribution between the widow and the representatives of the husband. In the following cases the widow is considered as a surety for the husband's debt, and is allowed indemnity from the personal estate. 10 Rich. Eq. 285; 1 Md. Ch. Dec. 202; 3 Met. (Ky.) 578; 12 Serg. & R. 18; 8 R. I. 160; 69 N. C. 67; and in two cases she was allowed to throw the debt upon the heirs. *Kling* v. *Ballyntine*, 40 Ohio St. 391; 92 Ind. 180.

In New York, it is held that an inchoate right of dower is not such an estate as can be pledged; that the widow is not a surety, but has absolutely extinguished her right to the extent of one-third of the mortgage debt. She is not entitled to exoneration from the heir — *Hawley* v. *Bradford*, 9 Paige, 200; see 5 John Ch. 452; 13 Mass. 162; 1 Stock. Ch. 361, — nor (*semble*) from the personal estate. 1 Scribner on Dower, 511. Though there are statements in the same jurisdictions to the contrary. 18 Atl. Rep. at 380; 3 Pick. at 481; 3 Paige, 363.

EVIDENCE — RES GESTA. — In an action to recover damages for the death of the plaintiff's son, it appeared that the defendant's track was spread at the place where the injury occurred. *Held*, that it was no error to admit evidence that, about thirty minutes before the accident, the track-walker said to the section-boss, "The track is spread over beyond Rush." *Texas Ry. Co.* v. *Lester*, 12 S. W. Rep. 955 (Tex.).

In this case the court lays stress upon the fact that the communication was made by an agent of the company in the course of his duty, but it would seem that it would have been equally admissible had it been made by a stranger. The point this evidence went to prove was not the actual condition of the road, but the knowledge of the defendant. For this purpose, the communication to the section-boss was the most direct evidence possible, and it was not as an exception to the hearsay rule that it was admissible. 15 Am. L. Rev. 79.

HABEAS CORPUS. — The defendant had, before these proceedings were begun, illegally parted with the custody of the child in question, and did not know his whereabouts. *Held*, that the writ should issue, — by Lord Esher, M.R., since the defendant had parted with the custody of the child by an illegal act; by Fry, L. J., because the facts indicated a purpose to evade the process. *Reg.* v. *Barnardo*, 24 Q. B. Div. 283.

INSURANCE — BREACH OF CONDITION. — The plaintiffs shipped certain goods under a bill of lading which provided that the carrier, in case he should become liable for the loss of the goods, "should have the full benefit of any insurance that may have been effected upon or on account of said goods." The goods were then insured by the defendants under a policy which provided that in case of loss the assured would "subrogate to the insurers all their claims" against the carriers. The goods were lost by the negligence of the carrier, and the plaintiff brought an action on the policy. *Held*, the plaintiff cannot recover; for, if the insurance company should pay the loss and bring an action in the name of the shipper, the condition in the bill of lading would protect the carrier, and therefore the condition in the policy is nullified. *Fayerweather* v. *Phenix Ins. Co.*, 23 N. E. Rep. 192 (N. Y.).

MASTER AND SERVANT — NEGLIGENCE. — Builders contracted with a land-owner

to build houses. The contract provided that the defendants, a firm of iron-founders (selected by the land-owner's architect), should lay a fire-proof roofing on the house, for which the builders were to pay £213, and were also to provide scaffolding and other assistance. The defendants employed their own workmen. In the course of the work the plaintiff, one of the builders' workmen, was injured by the negligence of one of the defendants' workmen. *Held*, by Cotton and Lopes, L. JJ. (Fry, L. J., dissenting), that the defendants were sub-contractors under the builders; that they and their workmen must be taken to have been in the employment of the builders; that the man who caused the injury and the plaintiff were consequently under a common master and engaged in a common employment, so the action could not be maintained.

Fry, L. J., in his dissenting opinion thought that the defendants were independent contractors; but that whether they were or not, their workmen were not in the service of the builders; that the man who caused the injury and the plaintiff were not under a common master, although engaged in a common employment. *Johnson* v. *Lindsay*, 23 Q. B. D. 508 (Eng.).

PARTNERSHIP — STATUTE OF FRAUDS — INTEREST IN LAND. — The contract of a partner to withdraw from the firm and assign his interest to the other partners is an agreement to assign an interest in land, and must be evidenced by a sufficient memorandum within the Statute of Frauds. *Gray* v. *Smith*, 43 Ch. Div. 208 (Eng.).

POST-OFFICE — THREATENING POSTAL CARDS. — A postal card on which is a demand for a debt and a statement that "if it is not paid at once, we shall place the same with our lawyer for collection," is non-mailable matter within 25 St. U. S. 496, prohibiting the mailing of an envelope, wrapper, or postal card on the outside of which is language of "defamatory or threatening character, or calculated and obviously intended to reflect injuriously upon the character or conduct of another."

But a postal card containing the words "Please call and settle account, which is long past due and for which our collector has called several times, and oblige," etc, is not within the statute, as the language is not threatening, or calculated to attract public notice. *U. S.* v. *Baley*, 40 Fed. Rep. 665.

REAL PROPERTY — COMPENSATION FOR OBSTRUCTING ANCIENT LIGHTS. — A warehouse, authorized by statute, darkened the lights, some ancient, some modern, of an abutter. *Held*, that apart from the words of the statute, the measure of damages should include the modern lights, since their darkening was a natural consequence of the obstruction of the ancient lights. *In re London, Tilbury, & Southend Railway Co. et al.*, 24 Q. B. Div. 326.

REAL PROPERTY — POSSIBILITY UPON A POSSIBILITY. — The testator left land in trust for his unmarried daughter for life, remainder to any husband whom she might marry, remainder in fee to their children. *Held*, that the legal remainders were void, since she might marry a man unborn at the testator's death. The rule against a possibility upon a possibility is an absolute rule, independent of the rule against perpetuities. *In re Frost*, 43 Ch. D. 246.

This is the first case to follow the rule laid down in *Whithy* v. *Mitchell*, 42 Ch. D. 494. For a digest of this case and references to the authorities on this disputed point see 3 Harv. L. Rev. 284.

REAL PROPERTY — QUITCLAIM DEED. — The grantee under a quitclaim deed takes the estate subject to the equities. For when a person purchases of another who is willing to give only a quitclaim deed, the purchaser is bound to inquire at his peril what outstanding equities exist. He cannot be deemed a purchaser without notice. His grantor virtually declares to him that he will not warrant the title, and it may be presumed that the purchase price was fixed accordingly. *Steele et al.* v. *Sioux Valley Bank*, 44 N. W. Rep. 564 (Ia.).

STATUTE OF FRAUDS — MEMORANDUM — PAROL EVIDENCE. — Where a memorandum of a contract for the sale of land, which failed to identify the property, and a receipt "on account of the purchase-money for the Fleton Manor House estate," signed by the defendant, were connected by parol evidence, *held*, there was a good memorandum within the Statute of Frauds. *Oliver* v. *Hunting*, 62 L. T. Rep. N. S. 108 (Eng.).

STATUTE OF LIMITATIONS — DIVIDENDS — DEMAND NECESSARY. — An action was brought to recover dividends declared upon the stock of the defendant corporation. It appeared that these dividends had not been paid for many years,

and that they stood as due on the books of the company. The prescription of thirteen years was pleaded. *Held*, that dividends on stock are payable only on demand, and that until demand and refusal prescription does not run against the person entitled. *Armant* v. *New Orleans & C. R. Co.*, 7 So. Rep. 35 (La.).

TORT — TRESPASS BY CATTLE. — The plaintiffs were owners of certain unenclosed tracts scattered through the public lands in Utah. They sought an injunction to restrain the defendants from pasturing their cattle on this domain. *Held*, that a decree could not be granted, even though the cattle were sure to trespass on plaintiffs' land. The common-law rule that every one must restrain his stock on his own land is not applicable to the sparsely settled portions of the West. *Buford* v. *Hantz*, 10 Sup. Ct. Rep. 305.

This decision is in accord with the decisions of several of the Western States. It would seem that the case might have been put on the short ground that the Utah statute made it the duty of the plaintiffs to fence; but Miller, J., in giving the opinion of the court, says the English rule has no application whatever. For an interesting discussion of the origin of the common-law liability, see Holmes, Com. Law, 10.

WILLS — CONSTRUCTION. — The testator left a legacy and a power of appointment to his "executors herein named." A. renounced probate. *Held*, that he was entitled to the legacy and the power. *In re Mainwaring*, 62 L. T. Rep. N. S. 63 (Eng.).

REVIEW.

PRINCIPLES OF THE LAW OF CONTRACT. By Reuben M. Benjamin. Bloomington, Ill. 1889. 12mo. Pages xi and 168.

This outline treatise on the law of contract is confessedly an attempt to hasten codification. While one may perhaps be permitted to ask *cui bono?* with reference to this object, yet it must be admitted that Mr. Benjamin has stated admirably, and in very concise form, the essential principles of this branch of the law.

The book follows very closely the division of the subject adopted in Anson on Contracts. After showing, by a series of narrowings, the position which contracts occupy in the law, it discusses the Formation, Interpretation, and Discharge of Contracts, confirming each step by well-selected references from a few leading jurisdictions. No attempt is made to discuss controverted points, or even to notice them as such, — an unfortunate feature in a book which does not profess to be of a wholly local character, but excusable, perhaps, considering the codification bias of the author. The same is true of the preponderance of Illinois citations and extracts from Illinois statutes.

While such a book, of necessity, cannot be of very great value to the practising lawyer, it is admirably adapted to the use of students, especially in the rapid reviews to which they are so peculiarly liable. As a supplement to the somewhat disconnected system of teaching by cases, such a book, for purposes of coördination, is very useful.

W. B.